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RUTHIA HE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

CASE NO. 3:24-cr-00329-CRB

Plaintiff,

V.

RUTHIA HE, A/K/A RUJIA HE, and
DAVID BRODY.

**DEFENDANT RUTHIA HE'S TRIAL
BRIEF CONCERNING THE ADMISSION
OF CERTAIN COMMUNICATION CASE
IN CHIEF EXHIBITS.**

Defendants.

1 The Government has objected to “any attempt by Defendants to improperly admit their
 2 own statements” because, according to the Government, those statements constitute self-serving
 3 “hearsay.” ECF No. 319 at 4 (citing Fed. R. Evid. 801(d)(2)). Not so. No statement is *inherently*
 4 hearsay. Whether or not a statement is hearsay depends upon what use the offeror intends the fact-
 5 finder to make of it. Where the proponent of the evidence is *not* offering the statement to prove
 6 “the truth of the matter asserted,” it is not hearsay under Federal Rule 801, which limits excludable
 7 hearsay to those out of court statements being offered to prove “the truth of the matter asserted.”
 8 *See* FRE 801.

9 Ms. He intends to offer the below communications Exhibits (*e.g.*, emails, text messages,
 10 and Slack messages) into evidence during her case in chief.¹ As detailed below, given the purpose
 11 for which Ms. He is offering these Exhibits, each is admissible under the Federal Rules of
 12 Evidence. Should the Court have any concerns about the jury misunderstanding the purpose for
 13 which an Exhibit has been offered, Ms. He believes that an instruction explaining, where
 14 applicable, the limited purpose for which the Exhibit is being admitted would adequately cure any
 15 purported confusion.

16 **A. Evidence Offered for the Purpose of Demonstrating Effect on Defendant.**

17 It is well settled that “statements from one person to another, offered not for the truth of
 18 the matter, but to show their effect on the listener, are not hearsay.” *See* 5 Weinstein’s Federal
 19 Evidence § 801.11 (2025). The “relevant inquiry is whether the evidence supports reasonable
 20 inferences about how the statements influenced the listener’s state of mind, decisions, or actions
 21 in a way that is pertinent to the case.” *Id.*; *see also United States v. Lopez*, 913 F.3d 807, 826 (9th
 22 Cir. 2019) (explaining that the out-of-court statement of a declarant is admissible non-hearsay
 23 when offered “for the purpose of establishing what effect it had on the listener.”).

24
 25 ¹ Ms. He will also file, separately, additional briefing which provides an offer of proof explaining
 26 why additional non-communication exhibits that she intends to offer in her case-in-chief are
 27 admissible. Ms. He believes that, if her exhibits are admitted into evidence without any need to
 28 lay a further foundation, she will be in a position to rest her case by the lunch break on Thursday
 or shortly thereafter.

1 The below exhibits are being offered to demonstrate that certain information was conveyed
 2 to Ms. He (regardless of its factual “truth”) and thus affected her understanding and knowledge.
 3 *See* McCormick on Evidence § 249 (2d ed. 1972) (“A statement that D made a statement to X is
 4 not subject to attack as hearsay when its purpose is to establish the state of mind thereby induced
 5 in X, such as receiving notice or having knowledge or motive, or to show the information which
 6 X had as bearing on the reasonableness, good faith, or voluntariness of subsequent conduct, or on
 7 the anxiety produced.”). Given that the charges in this case depend on the jury’s ability to
 8 determine if Ms. He possessed the applicable *mens rea*, Ms. He respectfully contends that the jury
 9 must be permitted to consider the below exhibits.

- 10 • **TX 310:** This is a March 9, 2021 text message communication exchanged between
 11 Ms. He and Dr. Brody in which Dr. Brody explains that “prescribing stimulants for
 12 someone who does not strictly meet the requirement for DSM 5 ADHD is fine if it
 13 [c]an be justified on clinical grounds that are firm and the benefits clearly outweigh
 14 the risks.” This statement is not being offered for its truth, but for the effect it had on
 15 the listener, Ms. He, and her understanding that it was clinically appropriate to
 16 prescribe controlled stimulants to patients who did not strictly meet the DSM 5
 17 diagnostic criteria.
- 18 • **TX 5001 and 5001 A:** This is a February 26, 2020 communication exchanged via
 19 Facebook Messenger between Ms. He and a friend named Jarred Sumner. This
 20 communication occurred during the founding stages of Done. Mr. Sumner, who suffers
 21 from ADHD, recounts to Ms. He information about the ADHD treatment and medical
 22 care he receives from his psychiatrist at Kaiser Permanente. Mr. Sumner informs Ms.
 23 He that he has had only one appointment with his Kaiser psychiatrist, which lasted 30
 24 minutes, two years earlier, and that he receives his medication refills by clicking a
 25 “button” on his phone which sends the refill request through a Kaiser health portal. Mr.
 26 Sumner sends Ms. He a video of how the one-click refill process at Kaiser works. This
 27 communication is not hearsay because it is offered to show the effect on the listener,
 28 Ms. He, and is relevant because the information Ms. He receives from Mr. Sumner
 informs Ms. He’s understanding regarding typical standards for initial appointment
 times and follow up cadence when evaluating and treating ADHD.
- **TX 5017:** This is a July 15, 2020 text message exchange between Ms. He and Dr. Les
 Tsang, a board-certified psychiatrist and graduate of UCLA Medical School who was
 employed as Done’s Medical Director. Dr. Tsang informs Ms. He that he does not
 “want my patients to have to endure the useless exercise of the video questions in order
 to get their medications refilled. It gives me no clinically useful info, is impersonal, and
 an obstruction my patients need to overcome to access a basic service from our
 platform. I’ve been advising them that we’re trying to make patient experience easier
 and more user friendly so you don’t need an appointment before each refill and you can

1 just send a message or click a button to request a refill.” Dr. Tsang’s statements are
 2 not offered to prove the truth of his statements, but for the effect they had upon the
 3 listener, Ms. He, and their contribution to her understanding of clinically appropriate
 follow up policy.

- 4 • **TX 5135:** This is a September 14, 2020 Slack communication on which Ms. He is
 5 copied as a recipient. In the communication, a nurse practitioner practicing on
 6 Done’s online platform asks whether she needs to schedule an appointment with a
 7 patient in order to prescribe an increased dosage of ADHD stimulant medication to
 8 the patient. Done’s Medical Director, Dr. Les Tsang, informs the provider “If you
 9 think it’s clinically appropriate, [you] can issue the prescription and make a note in
 her chart without an appointment.” This communication is not being offered for its
 truth, but for the effect it had on the listener, Ms. He, and her understanding that it is
 not clinically necessary to schedule a follow up appointment before a provider adjusts
 a patient’s medication.
- 10 • **TX 5154:** This is a January 26, 2021 text message exchange between Dr. Brody and
 11 Ms. He in which Dr. Brody explains that, in his experience, “it is OK to go a long time,
 12 in some cases even up to a year, without a follow up.” This statement is not offered for
 13 its truth, but for the effect on the listener, Ms. He, and her understanding that it was
 14 clinically appropriate for patients not to be seen for follow ups for extended periods of
 15 time.
- 16 • **TX 5162:** This is a June 18, 2021 text message communication in which Dr. Brody
 17 informs Ms. He, “I am working on my ‘What is ADHD?’ Seminar and I’m feeling it
 18 will demolish anyone who says that people need to fit strictly the diagnostic criteria
 19 for ADHD before they are prescribed treatment.” This statement is not being offered
 20 to establish the truth of Dr. Brody’s statements but for the effect on the listener, Ms.
 21 He, and her understanding that it was clinically appropriate to prescribe controlled
 22 stimulants to patients who did not strictly meet the DSM 5 criteria.
- 23 • **TX 5166:** This is a December 22, 2021 text message communication in which Dr. Brody
 24 informs Ms. He that it is clinically appropriate to have a shorter appointment in
 25 circumstances where a patient has been previously diagnosed by a different medical
 26 provider, prescribed ADHD medication, and is now stable on their medication. The
 27 statements are not offered for their truth, but for their effect on the listener, Ms. He,
 and her understanding of the propriety of Done’s appointment times and transfer
 appointment policies.
- 28 • **TX 5169:** This is a March 19, 2022 text message communication in which Dr. Brody
 informs Ms. He that the practice of “trying out stimulants for people who don’t quite
 make the DSM-V diagnosis” is one that “scientists and researchers will understand and
 probably agree with” and that those who disagree with that practice are wrong. The
 statements are not offered for their truth, but for their effect on the listener, Ms. He,
 and her understanding that it is clinically appropriate to permit medication trials even
 when patients don’t quite satisfy the DSM 5 criteria.

- 1 • **TX 6403:** This is a March 12, 2021 communication in which Done's Chief Medical
2 Officer, the triple board certified and UPenn and Stanford-trained medical doctor, Dr.
3 Jayaram Brindala, informs Ms. He that there are “[n]o regulatory concerns” about
4 Done's proposed automatic refill policy. Dr. Brindala's statements are not offered to
 prove the truth of his statements, but for their effect on the listener, Ms. He, and her
 understanding of the propriety of Done's automatic refill policy.
- 5 • **TX 6405:** This is a January 20, 2021 email communication in which Dr. Jayaram
6 Brindala (described above, in connection with TX 6403), Done's Chief Medical
7 Officer, describes to Ms. He a “standard appointment process” and provides a template
8 for how clinicians should allocate their time during Done's 25-minute initial
 evaluations. This communication is not offered for its truth, but to show the effect on
 Ms. He's state of mind and her understanding that the length of initial evaluations at
 Done were medically reasonable.
- 9 • **TX 6407:** This is a February 19, 2021 Slack communication about Done's intake
10 questionnaire in which Dr. Jayaram Brindala states that “[t]he forms should be updated
11 and shortened.” Ms. He is copied on the communication. This communication is not
12 offered for the truth, but for the fact that it was uttered and to show the effect on Ms.
13 He's state of mind and her understanding that shortened intake forms were clinically
 appropriate.

14 B. Evidence Offered as Circumstantial Evidence of Defendant's State of Mind.

15 When a defendant makes a statement that tends to demonstrate her state of mind, it is
16 admissible as non-hearsay, regardless of whether the statement is “true.” As Weinstein's Federal
17 Evidence explains, “words or conduct offered as circumstantial evidence of an actor's beliefs or
18 thoughts do not constitute statements under the rule against hearsay. **Thus, the rule against**
19 **hearsay does not bar evidence introduced to show a party's viewpoint or attitudes, or the**
20 **basis for his or her conclusions.**” *See* 5 Weinstein's Federal Evidence § 801.11 (2025) (emphasis
21 added).

22 Judge Chen of this District explained this principle in *United States v. Yagi* when he
23 admitted, over the Government's objection, a number of emails authored by the defendant in which
24 he expressed his belief that he was being “discriminated against” and that county personnel had
25 engaged in “misconduct.” 2013 U.S. Dist. LEXIS 189642, *6-14 (N.D. Cal. Oct. 7, 2013). As
26 Judge Chen explained, the emails would not be admitted to prove the “truth” of what the defendant
27 was expressing—*i.e.*, that, as a factual matter, the defendant was being discriminated against or

1 that county officials had engaged in misconduct—but *were* admissible for the non hearsay purpose
 2 of demonstrating the defendant’s *belief* that he was being discriminated against. *Id.* Because such
 3 a belief would “offer an alternative explanation” to the jury as to why the defendant acted as he
 4 did, as compared to the Government’s arguments about the defendant’s motive for acting, the
 5 evidence was relevant and, because not barred by the rule against hearsay, admissible. *Id.*

6 Given that the charges in this case depend on the jury’s ability to determine if Ms. He
 7 possessed the applicable *mens rea*, Ms. He respectfully contends that the jury must be permitted
 8 to consider the below exhibits, which tend to show her “beliefs and thoughts,” *see* Weinstein, at §
 9 801.11, regarding key factual points that the Government has put at issue.

- 10 • **TX 5211.0017-0018:** This is a February 5, 2020 Slack message between Ms. He and
 11 the co-founder of Done, Anh Tran. Mr. Tran sends Ms. He a map demonstrating the
 12 lack of psychiatrists across the United States. Ms. He responds, “Yeah Make
 13 psychiatrists more accessible is def a problem we can solve.” The Exhibit is not
 offered for its truth, but as circumstantial evidence of Ms. He’s then-existing state of
 mind and motivations for founding Done.
- 14 • **TX 5123:** This is a February 21, 2020 exchange over Facebook Messenger between
 15 Ms. He and a friend named Julie Zhou. Ms. He explains her belief that there is a large
 16 “underground market” for ADHD medication and that even those legitimately suffering
 17 from ADHD sometimes obtain medication “illegally” because of factors such as stigma
 18 and lack of access to adequate care. During its case in chief, the Government admitted
 19 certain other communications in which Ms. He describes the “target market” of Done
 20 as those who use ADHD medication “illegally” (*see e.g.*, TX 19). Accordingly, Ms.
 21 He seeks to offer TX 5123, a contemporaneous communication from the same time
 22 period, as circumstantial evidence that when she referred to individuals who use ADHD
 23 medication “illegally,” she believed she was speaking about those who legitimately
 24 need the medication but cannot obtain it due to barriers to accessing traditional medical
 25 settings—as opposed to drug addicts and those who seek to abuse the medication.
- 26 • **TX 5146.0003:** This is a January 14, 2021 text message between Dr. Brody and Ms.
 27 He, in which Ms. He recommends responding to a question from a nurse practitioner
 about Done’s follow up practices, as follows: “We can give them an official answer
 when they ask this type [of] question[]. For example, we can say we encourage
 [them] to do a follow up visit the first month and after that the provider can follow up
 sync or async based on their judgment. However, they will have to do a follow up at
 least every 24 months (regulation requirement, need to see if every state has this).
 For complex patients they need to consult with the physicians.” This statement is not
 offered for its truth but for the fact that Ms. He recommended giving this answer in
 response to the nurse practitioner’s question. Ms. He’s statement that “they will have
 to do a follow up at least every 24 months (regulation requirement, need to see if

1 every state has this)" is offered as circumstantial evidence of Ms. He's understanding
 2 that the minimum legal required frequency for follow up appointments was two years.

- 3 • **TX 5173:** This is an April 14, 2022 email exchange amongst Ms. He, Dr. Brody, and
 4 certain public relations professionals retained by Done. In the exchange, Ms. He and
 5 Dr. Brody express a desire to defend Done's clinical practices to the media. The
 6 response of the public relations consultant is "I'm concerned about your approach to
 7 our current media situation, and want to ensure that we are all on the same page. We
 8 have intentionally positioned Done as a membership platform and not as a medical
 9 provider." The exhibit is relevant to circumstantially demonstrate that Ms. He and Dr.
 10 Brody did not believe there was anything improper with Done's clinical practices and
 11 undermines the Government's allegations that they intentionally misled the media
 12 because they understood that Done's prescription practices were unlawful.
- 13 • **TX 5176:** This is a May 18, 2022 email exchange amongst Dr. Brody, Ms. He, an
 14 executive in the Finance Department, MJ Chey, and marketing employee, Joanne Dai,
 15 in which Dr. Brody complains that a public relations entity retained by Done had sought
 16 to dissuade him from publishing an article he was writing regarding his approach to
 17 treating ADHD. Dr. Brody's statements are not being offered for their truth, but for
 18 the fact that Dr. Brody raised this complaint, which is circumstantial evidence of his
 19 state of mind and his belief that his approach to treating ADHD was clinically
 20 appropriate.
- 21 • **TX 5229.0004:** This is a March 9, 2020 Slack communication between Ms. He and
 22 Done's co-founder, Anh Tran, in which Ms. He states, "I was thinking that we really
 23 need to think about how to ask questions to make people tell us the truth." Mr. Tran
 24 responds, "Yeah good point. Maybe asking about their desired duration of treatment.
 25 Because if someone just wants a fun stash of drugs, then they want a high dosage and
 26 just 1 bottle. Whereas you probably don't want 10mg of Adderall for 6 months. That's
 27 a lot of ineffective Adderall." These statements are not offered for their truth, but as
 28 circumstantial evidence demonstrating Ms. He's state of mind, namely that she and her
 co-founder intended and wished for Done to be used by people who suffered from
 ADHD, rather than by recreational drug seekers and those who sought to abuse
 Adderall.
- 29 • **TX 5260:** This is an April 2, 2020 Slack communication between Ms. He and Done's
 30 co-founder, Anh Tran, in which they discuss a patient who they believe may be a drug
 31 addict. Ms. He suggests that Done either cancel the patient's appointment or inform
 32 the patient (in advance of the appointment) that he will not be prescribed a stimulant.
 33 Ms. He's statements are not offered for their truth, but for the fact that they were said,
 34 and they are circumstantial evidence of Ms. He's lack of intent to distribute controlled
 35 substances for no legitimate medical purpose and outside the usual course of
 36 professional practice.
- 37 • **TX 5272:** This is an April 10, 2020 Slack communication between Ms. He and
 38 Done's co-founder, Anh Tran. Ms. He and Mr. Tran discuss how to screen out
 39 patients who are too complex to be effectively treated via telehealth from accessing

1 Done's platform. Ms. He ultimately suggests language for Done's intake
 2 questionnaire to screen out complex patients. These statements are not offered for
 3 their truth, but for the fact that they were said and as circumstantial evidence of Ms.
 4 He's lack of intent to distribute controlled substances for no legitimate medical
 5 purpose and outside the usual course of professional practice.

- 6 • **TX 5308:** This is a November 3, 2020 Slack message exchange which took place
 7 over Done's "Medical Team" channel and on which Ms. He was copied. During the
 8 exchange, a nurse practitioner explains that she is uncomfortable prescribing
 9 stimulants to a particular patient. Dr. Brody agrees with the nurse practitioner's
 10 assessment and states as follows: "[Y]ou and/or Done are not obligated to give the
 11 patient what she is demanding." Ms. He voices no objection or disagreement with
 12 Dr. Brody's direction. Dr. Brody's statement is not offered for its truth, but as
 13 circumstantial evidence of his state of mind and for the fact that he uttered those
 14 words to a clinician practicing on Done's platform. His statement and Ms. He's
 15 implied agreement and consent is relevant to disproving the Government's argument
 16 that Ms. He and Dr. Brody pressured clinicians to prescribe inappropriately. Further
 17 the Exhibit serves as circumstantial evidence of their lack of intent to distribute
 18 controlled substances for no legitimate medical purpose and outside the usual course
 19 of professional practice.
- 20 • **TX 5196:** This is a draft response to media inquiries in which Dr. Brody and Ms. He
 21 propose certain answers justifying Done's clinical practices. Other documents that
 22 Ms. He seeks to offer as exhibits (*see e.g.*, TX 5173, 5176) will demonstrate that a
 23 public relations firm advised Ms. He and Dr. Brody to portray Done differently to the
 24 media. This exhibit is not being offered for the truth of any statements made therein,
 25 but for the fact that Ms. He and Dr. Brody drafted these responses, which were later
 26 changed after consultation with the public relations firm. The exhibit is relevant to
 27 circumstantially showing that Ms. He and Dr. Brody did not believe there was
 28 anything improper about Done's practices and undermines the Government's
 29 allegations that Defendants intentionally misled the media because they understood
 30 that Done's prescription practices were unlawful.
- 31 • **TX 5835:** This is a text message exchange from July 19, 2021, in which Done's
 32 former Chief Medical Officer, Dr. Jayaram Brindala, informs Ms. He that he thinks
 33 that he can find an acquirer for Done for \$100-\$130 million. This communication is
 34 not offered for the truth, but for the effect on the listener, Ms. He, and her reasonable
 35 expectation that Dr. Brindala would not risk his own credibility and reputation
 36 pitching Done to investors unless he believed that Company's practices were lawful
 37 and appropriate. The message also impeaches a hearsay declarant, Dr. Brindala, who
 38 wrote a Risk Mitigation Report purportedly raising concerns about Done's
 39 prescribing practices, which the Government has used to suggest that Dr. Brindala left
 40 Done out of concern about the propriety of its clinical policies.
- 41 • **TX 5836:** These are March 7, 2022 text message exchanges in which Done's former
 42 medical director, Dr. Jayaram Brindala, discusses his efforts to find a buyer for Done

1 and asks Ms. He if he might return to Done as a full-time employee. The
 2 communication is not offered for the truth of any statement asserted, but for the fact
 3 that it was uttered and for the effect on the listener, Ms. He, and her reasonable
 4 expectation that Dr. Brindala would not seek to return to employment at Done if he
 5 believed the Company was engaged in illegal practices. The message also impeaches
 6 a hearsay declarant, Dr. Brindala, who wrote a Risk Mitigation Report purportedly
 7 raising concerns about Done's prescribing practices, which the Government has used
 8 to suggest that Dr. Brindala left Done out of concern about the propriety of its clinical
 9 policies.

10

11 **C. Statements of Defendant's Then-Existing State of Mind or Emotional Condition
 12 Are Admissible, Even If Offered for Truth, Under Rule 803(3).**

13 In certain instances, a declarant's statements do not just "circumstantially" demonstrate her
 14 state of mind, but instead constitute express declarations as to her state of mind or emotional
 15 condition. These statements are often, although not always, in the form of "I believe [X]" or "I
 16 am [upset, worried, grateful, etc.]." Under Federal Rule of Evidence 803(3), the rule against
 17 hearsay does not exclude statements of a "declarant's then existing state of mind, emotion,
 18 sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and
 19 bodily health)," although the Rule does not permit the introduction (for truth) of "a statement of
 20 memory or belief" in order to "prove the fact remembered or believed."

21 Three factors bear on admissibility under Rule 803(3): "contemporaneousness, chance for
 22 reflection, and relevance," meaning that a court should consider whether the timing of the
 23 declarant's statement gives rise to an inference that the "state of mind expressed in the [email]" is
 24 fabricated. *Yagi*, 2013 U.S. Dist. LEXIS 189642, at *10-14 (admitting defendant's statements
 25 regarding his state of mind when they were temporally close to the actions that gave rise to his
 26 emotional feeling); *United States v. Miller*, 874 F.2d 1255, 1264 (9th Cir. 1989) (describing
 27 admissibility requirements under Rule 803(3)).

28 Ms. He intends to offer the following exhibit for admission under Rule 803(3), should the
 29 Court disagree that it is admissible as non-hearsay statements offered to circumstantially prove
 30 Ms. He's state of mind. *Supra* at Section B; *see also* 2 McCormick on Evid. § 274 (7th ed.) (noting
 31 that the Rule 803(3) exception exists because there is often "no better way to prove a relevant

1 mental or physical condition than through the statements of the individual whose condition is at
 2 issue" and explaining that while courts "have tended to lump together arguably hearsay statements
 3 asserting the declarant's state of mind with those arguably nonhearsay statements that tend to prove
 4 state of mind circumstantially, applying a general exception to the hearsay rule," in fact, "many of
 5 these statements could be treated as nonhearsay.").

6

- 7 • **TX 5275:** This is a March 4, 2020 Slack message exchange between Ms. He and
 8 Done's co-founder, Anh Tran, discussing Done's pre-appointment screening process.
 9 At the conclusion of the conversation, Mr. Tran suggests that should inappropriate
 10 patients slip through Done's screening process, Done "can either just let them go
 11 through and charge them \$200 for the consultation or we can maximize opportunity to
 12 convert to long term membership." Ms. He responds, "Then we will be truly a platform
 13 only prescribing stimulants—I think the goal should be get the patients properly
 14 treated." Ms. He's statement of her then-existing goal, the contemporaneous nature of
 15 her statement (when Done was in its infancy), and the lack of an opportunity for
 16 reflection and fabrication before making the statement, render it admissible under Rule
 17 803(3).

18

19 **D. Instructions, Directives, Warnings, Questions, and Other Statements That Are
 20 Significant Because They Were Made, Without Regard to Their "Truth," Are Not
 21 Hearsay Statements and Thus Are Not Excluded by the Rule Against Hearsay.**

22 It is well settled that where "the significance of an offered statement lies solely in the fact
 23 that it was made, no issue is raised as to the truth of anything asserted." 5 Weinstein's Federal
 24 Evidence § 801.11. Additionally, directions and commands are admissible if relevant, even if
 25 asserted by the defendant, because they are not statements capable of being "true or false." *See* 4
 26 Federal Rules of Evidence Manual § 801.02 (2025) ("A statement that is a direction or command
 27 is ordinarily not hearsay, for two reasons: 1. It is not something that could be true or false; and 2.
 28 It is not an assertion, because the declarant giving a direction or order is not intending to assert a
 fact but is rather intending for an act to happen."); *see also United States v. Garza*, 2024 WL
 4216952, at *18-19 (E.D. Cal. Sept. 17, 2024) ("questions are not hearsay" and a "command is
 not hearsay because it is not an assertion of fact") (internal citations omitted). Warnings and
 questions fall into this same category, for this same reason. *United States v. Garcia-Villanueva*,

1 1988 U.S. App. LEXIS 22262, at *9 (9th Cir. Aug. 10, 1988) (warnings are not hearsay
 2 statements and thus are not excluded by the rule against hearsay).

3 Ms. He will seek to offer the following exhibits on the basis that they constitute non-
 4 hearsay under this rule:

- 5 • **TX 458.0002**: This is a November 3, 2022 Signal message between Ms. He and an
 6 individual named Nick Chang. In this communication, Ms. He asks, with respect to
 7 complying with a grand jury subpoena whether “[f]rom your experience, do we need
 8 to collect all the historical versions of procedures? It’s really hard to collect all the
 9 previous iterations. And what would happen if we miss some documents or history
 10 versions?” Mr. Chang replies “Just do your best. They may/will ask to see
 11 procedures. If we don’t have all versions that’s okay. Do your best. Hard for any
 12 company to keep everything.” Ms. He’s questions are not hearsay because they are
 13 not capable of being “true or false,” and Mr. Chang’s response bears on her state of
 14 mind and is relevant with respect to demonstrating Ms. He’s lack of intent to obstruct
 15 the grand jury investigation into Done.
- 16 • **TX 5014**: This is an email, dated April 5, 2023, in which Done’s customer support
 17 informed a Done patient that they could not refund her because her appointment was
 18 canceled due to a missing intake form. This statement is not offered for its truth, but
 19 for the fact that it was sent to a Done patient, demonstrating that Done took the intake
 20 process seriously.
- 21 • **TX 5015**: This is an email dated July 10, 2020, in which Done’s customer support
 22 cancels a patient’s appointment due to the patient’s failure to complete an intake
 23 form. The statement is not offered for its truth, but for the fact that it was sent to a
 24 Done patient, demonstrating that Done took the intake process seriously.
- 25 • **TX 5128**: This is an email, dated June 21, 2020, in which Ms. He sends Done’s then
 26 medical director, Dr. Les Tsang (described above), an invitation to edit a document
 27 entitled “Medication Renewal Best Practices.” The statement is not offered for its truth,
 28 but for the fact that Ms. He sent this email to Dr. Tsang, which serves as circumstantial
 evidence of her desire to elicit the advice of medical professionals on medical subjects
 and issues.
- 29 • **TX 5163**: This is a July 13, 2021 email sent by Done to patients, informing them of
 30 resources, beyond Done itself, that they could use to manage their ADHD, including a
 31 10% discount that was being made available to Done patients so that they could access
 32 and utilize an online therapy service called Better Help. The Exhibit is not being
 33 offered for the truth of any statement asserted therein, but for the fact that it was sent.
 34 It is relevant to demonstrating that Done’s purpose was to treat patients with ADHD
 35 and offered patients more than just easy access to drugs, which contradicts the
 36 Government’s argument that Ms. He intended for the site to serve as a prescriber of 40
 37 million “unauthorized” pills of ADHD medication.

- 1 • **TX 5167:** This is a March 8, 2022 email sent by Done to patients in Montana, informing
2 them that Done could no longer treat patients in that state via telehealth, due to changes
3 in Montana's telehealth laws. The email is offered not for the truth of any statement
4 asserted therein, but for the fact that it was sent. The document is relevant to
5 demonstrate Done's efforts to comply with state telehealth regulations concerning the
6 online prescription of controlled substances, which contradicts the Government's
7 argument that Ms. He intended for the site to serve as a prescriber of 40 million
8 "unauthorized" pills of ADHD medication.
- 9 • **TX 5179:** This is a Signal message in which Ms. He asks Done employees, in the
10 period *before* Done received a grand jury subpoena, to speak on an encrypted
11 messaging application to discuss public relations issues. The statements are not
12 offered for their truth but (1) because they occurred before Done was notified of a
13 grand jury investigation and (2) because Ms. He asks for communications to occur on
14 the encrypted application for PR reasons, both of which are relevant to undermining
15 allegations that Ms. He used encrypted devices in an effort to obstruct a grand jury
16 investigation.
- 17 • **TX 5254:** This is a Slack communication between Ms. He and her Done co-founder
18 Anh Tran dated March 28, 2020. Ms. He and Mr. Tran discuss a patient who they
19 suspect is drug seeking. Ms. He instructs Mr. Tran to "make sure he won't sign up
20 and freak out our providers," and to "monitor if he signed up—or just email him we
21 don't support illegal activities." Ms. He's statements are instructions that are
22 incapable of being true or false and are circumstantial evidence that she lacked an
23 intent to distribute controlled substances for no legitimate medical purpose and
24 outside the usual course of professional practice.
- 25 • **TX 5334 through 5353:** Ms. He seeks to offer these communications in which Done
26 provider, Erin Kim, whom the Government has alleged knowingly or intentionally
27 prescribed Done patients for no legitimate medical purpose and outside the usual course
28 of professional practice, requested that patients be discharged from the platform. The
 communications are not offered for the truth of any assertion therein, but for the fact
 that Kim made the statements. The communications are relevant because the fact that
 Kim requested that patients who were inappropriate for stimulant care be discharged
 from the platform put Done on notice that she was acting as a responsible provider and
 effectively concealed from Ms. He and Done that she would knowingly or intentionally
 prescribe a controlled substance for an unlawful purpose.
- **TX 5834:** This is a Slack exchange from a Done employee named Peiro Zhang asking
 why her salary was paid by wire from Makebelieve Asia Consultancy. Zhang is asking
 a question, which is incapable of being true or false, and is this not hearsay. The exhibit
 is relevant to impeaching the testimony of Special Agent Guzman, who suggested
 during his testimony that Makebelieve Asia Consultancy was just a shell entity that
 performed no legitimate business function. Additionally, the communication is
 admissible under Federal Rule of Evidence 807, because (1) the statement is supported
 by sufficient guarantees of trustworthiness—after considering the totality of
 circumstances under which it was made; and (2) it is more probative on the point for

1 which it is offered than any other evidence that the proponent can obtain through
 2 reasonable efforts.

- 3 • **TX 6395:** This is a Slack exchange dated November 28, 2021, in which a Done nurse
 4 practitioner named Myron Faulkner messages a member of Done's care team,
 5 instructing them that Done patient Cheryl Cooke—one of the patients whose medical
 6 care was described by Government expert Dr. Goodman as outside the usual course of
 7 professional practice and without a legitimate medical purpose—must be scheduled for
 8 an appointment. This communication is an instruction that is not capable of being true
 9 or false and thus is not barred by the rule against hearsay.
- 10 • **TX 7649, 7690D, and 7669:** These Exhibits involve communications from March
 11 2022 between Ms. He and public relations professionals retained by Done, which
 12 demonstrate that Ms. He removed language—that the Government now contends was
 13 false—from a “draft response” to certain media inquiries. This evidence is not offered
 14 for the truth of any statement asserted therein, but to show the fact that Ms. He removed
 15 the language at issue from the draft responses and that the public relations firm added
 16 the language back in.²

17 **E. Evidence Offered for the Nonhearsay Purpose of Circumstantially Demonstrating**
the Lack of a Criminal Conspiracy

18 As described above, when evidence is not offered to prove the “truth” of the statements
 19 asserted but rather to demonstrate, circumstantially, some other relevant evidentiary point, it is not
 20 barred by the rule against hearsay. Thus, statements and communications which demonstrate “the
 21 context within which [the] parties had been acting,” *see Weinstein's* at § 801.11, or which are
 22 arguably inconsistent with how co-conspirators, joined together in a joint criminal venture, would
 23 likely communicate, are relevant and admissible when offered in support of that argument. As
 24 always, it is up to the fact-finder to interpret the evidence, including whether to accept or reject
 25 the argument that an admitted communication is inconsistent with how persons engaged together
 26 in a joint criminal venture would communicate.

- 27 • **TX 5132, 5133, 5134:** This is a text message communication from September 8, 2022
 28 in which Ms. He forwards a message from a woman named Ann Marie Wiley to Dr.
 29 Brody. Ms. Wiley complains in her message that she has ADHD, but has “encountered
 30 judgmental pharmacists” who refuse to prescribe her ADHD medication “because of
 31 people who choose to abuse ADHD meds.” Ms. Wiley also complains that her primary

2 Ms. He is prepared to call a witness who can testify to the fact that she removed the language
 3 from the draft response to Wall Street Journal and lay further foundation for these documents.
 4 She will not need to call that witness if the documents are admitted.

care physician requires her to drive 45 minutes to medical appointments every 4 weeks for prescription refills of her medication. Ms. He and Dr. Brody discuss among themselves their belief that it is the experiences of patients like Ms. Wiley why Done's services are needed and that "someone should not go to a specialty mental health provider and find their policies are exactly the same as their PCP." These communications are not offered for the truth, but for the fact that Ms. He and Dr. Brody uttered them to each other in response to Ms. Wiley's message, as evidence circumstantial to establishing their states of mind, and as evidence to undermine the existence of a conspiracy to act for no legitimate medical purpose and in the usual course of professional practice.

- **TX 5140:** This is a text message exchange from November 21, 2022 in which Ms. He tells Dr. Brody "I think they may have questions about controlled substances. For me I see it as not much different from other medications—just you cannot refill for unlimited time for sell etc. For medications as long as the goal is to treat patients, I don't see the criteria of prescribing controlled substances should be different—as long as it's for proper medical reason and have pdmp checked." This statement is not offered for the truth, but for the fact that Ms. He said it to her alleged co-conspirator, which undermines the allegation that she entered into a criminal agreement with Dr. Brody to distribute controlled substances for no legitimate medical purpose and outside the usual course of professional practice, as opposed to having the goal of treating patients for "proper medical reason[s]."
- **TX 5144:** This is a text message exchange from December 23, 2020 between Ms. He and Dr. Brody in which they agree that a nurse practitioner should not prescribe a controlled substance to a patient who the nurse practitioner had never seen and who canceled a transfer appointment. Ms. He and Dr. Brody's statements are not offered for the truth, but for the fact that they were communicated to each other, which is relevant to disproving that both defendants entered into a criminal conspiracy to distribute controlled substances for no legitimate medical purpose and outside the usual course of professional practice.
- **TX 5145:** This is a text message exchange from January 9, 2021 in which Ms. He tells Dr. Brody that the reason she built Done was to solve the problem of under supply of psychiatrists and to use technology to help psychiatrists see more patients. The statement is not being offered for the truth, but for the fact that Ms. He made the statement to her alleged co-conspirator, which undermines the allegation that she entered into a criminal agreement with Dr. Brody to distribute controlled substances for no legitimate medical purpose and outside the usual course of professional practice.
- **TX 5151:** This is a text message exchange from January 21, 2021 between Dr. Brody and Ms. He, in which they discuss the frequency of follow up appointments. Both Ms. He and Dr. Brody agree that nurse practitioners should have flexibility to exercise their discretion and check in with their patients, and Ms. He says "if they have time, I'd rather they can check-in every day." These statements are not offered for the truth but

1 for the fact that Dr. Brody and Ms. He made them to one another, which undermines
 2 the allegation that they conspired to restrict the clinical autonomy of Done's providers.

- 3 • **TX 5164:** This is a text message exchange from November 29, 2021 between Dr. Brody
 4 and Ms. He in which they discuss their shared goal of eliminating symptoms of ADHD
 5 in Done's patients. The statements are not offered for the truth but for the fact that Ms.
 6 He and Dr. Brody communicated such a goal to each other, which undermines the
 7 allegation that they agreed with one another to distribute controlled substances for no
 8 legitimate medical purpose and outside the usual course of professional practice.
- 9 • **TX 5165:** This is a text message exchange between Dr. Brody and Ms. He from
 10 December 14, 2021 in which they discuss the importance of Done, as a healthcare
 11 platform, offering good clinical quality. These statements are offered not for the truth,
 12 but for the fact that Ms. He and Dr. Brody made such communications to each other,
 13 which undermines the allegation that they conspired with one another to distribute
 14 controlled substances for no legitimate medical purpose and outside the usual course
 15 of professional practice.
- 16 • **TX 5170:** This is a text message exchange between Dr. Brody and Ms. He from March
 17 20, 2022 discussing potential responses to press inquiries. Their reaction is to defend
 18 Done's practices to the media. The statements are not offered for the truth, but for the
 19 fact that Dr. Brody and Ms. He discussed among themselves defending (as opposed to
 20 obfuscating) the very practices that the Government alleges were unlawful, to the press.
 21 The fact that Ms. He and Dr. Brody engage in this discussion also undermines the
 22 Government's allegations that Defendants sought to misrepresent Done's practices to
 23 the media.
- 24 • **TX 5171:** This is a text message exchange between Dr. Brody and Ms. He from March
 25 26, 2022 discussing, in private, their shared goal of treating and raising awareness of
 26 ADHD in light of media reports critical of Done. The statements are not offered for
 27 the truth, but for the fact that the defendants discussed these goals with one another,
 28 which undermines the allegation that they agreed with one another to distribute
 controlled substances for no legitimate medical purpose and outside the usual course
 of professional practice.
- **TX 6800:** This is an email exchange between Elizabeth Shapard and a lead nurse
 practitioner for Done, Jillian Zimmerman, dated August 26, 2024. This email exchange
 occurs after Ms. He and Dr. Brody were indicted. In the exchange, Ms. Shapard
 expressed that she was "extremely upset and offended by the accusations from
 DEA/DOJ as my experience is not that of someone running a 'pill mill.'" During Ms.
 Shapard's examination, Ms. He sought to introduce this communication as a prior
 inconsistent statement of the witness, thus impeaching her trial testimony that she
 understood that what she was doing was unlawful, but the Court denied the admission
 of the statement at that time. (Tr. at 2414:1- 2424:12.). Ms. He seeks to re-offer that
 statement here as a prior inconsistent statement as well as for the non-hearsay purpose

1 of circumstantially establishing that, at the time she made the statement, Ms. Shapard
2 did not believe she had engaged in a criminal conspiracy.

3 It is impossible for the jury to properly assess and evaluate the Government's allegations
4 and the weight of its evidence unless the defense is permitted to offer alternative and contradictory
5 evidence, as expressly permitted by the Federal Rules of Evidence and the Ninth Circuit's
6 precedents. For these reasons, Ms. He respectfully submits that the Court should admit the
7 aforementioned case in chief Exhibits.

8

9 Dated: November 8, 2025

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10

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12 Koren Bell
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RUTHIA HE